

**CITY OF ORINDA
CITIZENS' INFRASTRUCTURE OVERSIGHT COMMISSION
MINUTES**

Wednesday, April 11, 2018

A REGULAR MEETING OF THE CITIZENS' INFRASTRUCTURE OVERSIGHT COMMISSION (CIOC) WAS HELD ON THE ABOVE DATE IN THE SARGE LITTLEHALE COMMUNITY ROOM, 22 ORINDA WAY, ORINDA, CALIFORNIA.

A. CALL TO ORDER

Chair Hubner called the meeting to order at 6:32 p.m.

The following documents were provided at this meeting:

1. *City Council Staff Report Agenda item 1.2, Packet Page 91 - Discussion of the Private Roads in Orinda* – by Director Theis, dated April 10, 2018

B. ROLL CALL

COMMISSIONERS: Walter Bell (absent, excused), Dennis Fay, Jud Hammon, Robert Hubner, Bill Hurrell, Terry Murphy, Richard Nelson

City Staff: Public Works and Engineering Services Director Larry Theis; Paving Program Project Manager Farah Khorashadi

Councilmember Darlene Gee

C. PLEDGE OF ALLEGIANCE– led by Chair Hubner

D. ADOPTION OF AGENDA

MOTION: By Commissioner Murphy, seconded by Commissioner Fay, to adopt the agenda. The motion carried by unanimous voice vote.

E. PUBLIC FORUM - None

F. CITIZENS' INFRASTRUCTURE OVERSIGHT MEETING MINUTES

Approval of CIOC Meeting Minutes of March 14, 2018

The Commissioners noted three minor corrections.

MOTION: By Commissioner Murphy, seconded by Commissioner Fay, to approve the meeting minutes of March 14, 2018, as amended. The motion carried by unanimous voice vote.

G. UPDATE – CITY COUNCIL ACTION ON PRIVATE ROAD ACCEPTANCE AND MAINTENANCE AND FORMATION OF A TASK FORCE

Chair Hubner asked staff to provide an update and he also asked Council-member Gee to provide any clarification.

Director Theis informed the CIOC that the City Council deliberated over 2½ hours on this matter; substantial information had been presented and discussed; he urged everyone to read the staff report, which is available on the City website. He distributed *City Council Staff Report Agenda item 1.2, Packet Page 91*, the excerpt which discusses different categories of roads; the City Council gave direction to staff to look at the formation of a Task Force. Staff is requesting input from the CIOC - potentially a recommendation as to how the Task Force would function, who would comprise the group, and generally in what forum or format these discussion should be held. This recommendation would be forwarded to the City Council; it would be a publicly noticed meeting and the members of the Task Force would be appointed by the City Council; some Councilmembers could sit on the panel, as could some CIOC members. It could be left to the Task Force to determine what the best recommendation would be, as there are varying opinions on the City Council as to what should be considered.

Staff went through every street segment identified by Steve Cohn and categorized those segments into five different groupings; all private roads are not the same and how they became private varies. For example, the Green category are the roads that were originally dedicated on a subdivision map to be public but were never accepted by the County; there could be many reasons for those roads not be accepted. Further, there was discussion regarding cul-de-sacs versus through streets, although that was not a main factor; road width could also be an element of consideration. The Gray category is never mapped/dedicated roads; there are several such parcels in Orinda, most of which are in southwest Orinda, south of Stein Way along west side of Moraga Way; many are small cul-de-sac streets that were not part of a subdivision map and there has been no offer to the public; these streets may not have mapped roadway easements, but there is a physical road; the City cannot accept streets in this category from a right-of-way standpoint; in order for the City to accept such a road, each property owner would have to dedicate easement to the City to have public right-of-way.

Note: A "divide and conquer" strategy. All of these "categories" serve tax paying residents of Orinda. There is no difference.

Commissioner Fay questioned whether it would remove the entire private road from consideration if one property owner did not dedicate his segment of the street to the City.

Director Theis advised that if the first property as you enter the road refused, then it would remove it from consideration; if the property owner was at the end of cul-de-sac, it may not; the City would have to obtain a title search on each of the properties to determine if any easements have been recorded or if there are separate agreements between property owners; there could be a situation where the property owner dedicated easement as a separate instrument; usually a property owner does not go to the trouble of dedicating an easement by separate instrument without the City accepting it at the end. This category is probably the most difficult to figure out and takes the

greatest amount of research; the majority of these lots are from the old Spanish land tract and the title report would be required.

Commissioner Fay complimented Director Theis for his comprehensive staff report presented at April 10, 2018, City Council meeting.

Commissioner Nelson asked if there is any distinction between an easement and actually granting ownership of property.

Director Theis replied that *easement* is different than *fee title*; he could provide more details of the nuances of private road groups which would be important for the Task Force to consider; several private road property owners have not said the City has to accept these roads into the public system; their belief is that the City can make an agreement with each of these groups; a Homeowners' Association (HOA) would be easier, but it may be that each individual property owner retains the right to maintain that road without accepting it as a public street; in this case there would be a larger issue of the public funds beyond if it could be accepted as public road.

Chair Hubner asked if this was similar to the Orindawoods area, where the roads are being paved but they are not owned by the City.

Director Theis responded that Orindawoods is one example; understanding the *right-of-way* is important, however it is not being considered an issue by some private property owners; the Wilder development is clearly dedicated to an HOA, where the HOA is responsible for maintenance of the private roads. Many property owners on private roads do not want to dedicate the roads to the public – they merely want to give the right to the City to maintain it – that is how they are bypassing having the road accepted. Director Theis highlighted *right-of-way* and *acceptance* and noted that is not the way some of the property owners on private streets want to proceed.

Chair Hubner clarified that the property owners on private streets do not want the City to take the streets, but want the City to pave the streets.

Commissioner Hammon stated that was not necessarily the case.

Commissioner Nelson questioned if it mattered from the City's and staff's standpoint whether the property owners on private roads want to grant the City an easement or grant ownership to the City.

Director Theis replied that most of the roads in the City of Orinda are in a roadway easement; on most subdivision maps there is a property line in the middle of the road and two dotted lines showing the outline of the roadway easement; however, the maps from the 1920's show it as a separate parcel; much of County ruling is based upon those maps at the time the roads were granted; what was granted on the maps were easements. For tax purposes, it is very vague; sometimes the tax is based on the center

line of the road and sometimes on the right-of-way line; in most cases it is to the center line of the road.

Commissioner Murphy offered an example to clarify; he noted that his property was part of Hacienda Homes which was an HOA with private roads prior to 1985; when the City was incorporated, the HOA was asked by the forming community of Orinda to vacate their easement in favor of the City so that the City would make it a public road; the County agreed as part of their obligation to repair the road prior to the City accepting the street. The deed shows that the property is owned to the middle of the street, but he never had custody over the street or five feet past the edge of pavement; the HOA had an easement; he did not have to sign off on it; in some of these instances, some of the individual owners would have to do the same thing as the HOA did, which is to vacate the easement in favor of the City

Commissioner Nelson remarked that he thought the City owned the right-of-way.

Director Theis advised that in most recent subdivisions, the maps specifically indicate in fee title and in those cases the City owns the right-of-way.

Commissioner Hammon stated that if most of the public roads are not owned by the City at all but by the property owner on each side of the road, then that really muddles the entire argument of using public funds to maintain private streets because many public roads are privately owned. The City has an easement for maintenance of the road, but the property itself is privately owned.

Commissioner Murphy clarified that City has the easement so they control it.

Director Theis advised that the City has the right to place a facility in the easement that the City is now responsible to maintain, even though it is on private property; it is the City's facility that is going through it, just like a pipeline; an EBMUD pipe is in an easement - the facility is EBMUDs, but the property owner technically owns the property.

Commissioner Nelson noted that a lawyer told him that the definition of *ownership* is control; so that makes the matter even uncertain.

Commissioner Murphy clarified that many property owners have easements for utilities; if there is an easement, it is an ownership position.

Director Theis said the remaining three categories include Red (private HOA maintained), Orange (private road easement), and Yellow (Roads of Hacienda).

Commissioner Murphy said that Roads of Hacienda has an HOA, although it is very limited.

Councilmember Gee asked if the Roads of Hacienda HOA functions as an HOA and whether they collect fees.

Director Theis replied that they do collect fees; it functions more for road maintenance; it is not a typical homeowners' association, but it operates similar to an HOA.

Commissioner Nelson inquired if the roads were contiguous and where exactly the development is located.

Director Theis noted that the Roads of Hacienda is one of the older developments, basically including everything developed relative to the Orinda Country Club golf course. The private section of Mira Loma is in this area and at some point the residents of Mira Loma opted out of the HOA. There were concerns how the HOA operates and that they could certainly raise their fees. The City has heard over the years that there is a slide on a road in the El Toyonal neighborhood that connects to Via San Inigo, a private road which is the only connection for three homes; those properties are not in the Roads of Hacienda, but the street which connects them is; there is an on-going plea from these property owners to fix the slide. The Roads of Hacienda HOA states that there is only \$100,000 in their fund and the HOA cannot afford to repair the slide. The property owners that pay into the HOA are scattered; it would be very difficult if the HOA raised dues because property owners may question why they should pay for this repair which could be miles away from their property.

Director Theis advised that the Orange category indicates private road easements; all of the HOAs are not identified; where they are identified, they are generally smaller subdivisions with clearly private road easements for the use of those particular property owners; the roads were never dedicated and are clearly shown to be private roads.

Commissioner Hammon stated that it is not clear if there is an assessment mechanism to pay for these roads.

Director Theis replied that he did not know the answer and that it would require a great amount of research for the staff.

Commissioner Hammon noted that there are three types where the property owners may have issues figuring out how to pay for the roads; the Green category streets are dedicated but not accepted; the private roads with an HOA clearly has a mechanism to pay for maintenance; the Roads of Hacienda HOA is dubious but exists.

Commissioner Fay questioned whether there was an established fee mechanism for the Roads of Hacienda.

Director Theis replied in the affirmative.

Commissioner Fay stated that in many ways there is no difference - the HOA collects revenue to maintain their roads.

Director Theis affirmed that the HOAs have the ability to assess the property owners.

Commissioner Fay asked for an explanation of *private road easements* and whether there was a mechanism to collect fees.

Director Theis provided the example he used at the City Council meeting, which was Monterey Terrace off of Tara Road; currently there are approximately six homes in this area; at the time it was subdivided, it was split into four large lots and the lots show on the map a 25' wide dotted line private and utility access easement where the road is today and granted to each of the property owners the right to use the road; he did not know if there is an HOA; there is definitely a private dedication, however it is not known how it is funded. In many cases, there are streets where the property owners get together and pay for the road maintenance; property owners on Lloyd Lane came to the City as their connection to Moraga Way is within City right-of-way; the City was looking to make upgrade on the City side of the property while the property owners were going to do paving on their side of the property; the property owners worked together to pay for the improvement; this is an example of the Gray category, *never mapped/dedicated*.

Director Theis suggested that the Task Force would need to figure out which streets have a funding mechanism and which ones do not; if it is an equitable issue, perhaps it doesn't matter how it is being funded - that would mean Wilder property owners would get their roads paved as well; that argument would most likely be brought forward. Additionally, he noted that Councilmember Orr had asked for some parameters; from the staff perspective, it would be to go back to the City Council in mid-May with a recommendation; hopefully with input from the Commissioners tonight as to how the Task Force should be comprised, what form, what type of forum, and how to set the parameters. The property owners on private roads have a philosophy that it is an equity issue - but they feel there is also an implementing issue regarding public roads and private roads. In their opinion, it is an easy matter to let the City come and maintain those streets.

Commissioner Fay asked for clarification regarding funding and the difference with *dedicated to the public but not accepted*; he wanted to know if the private road easement is also dedicate to the public.

Director Theis replied in the negative; it is dedicated to those particular property owners.

Commissioner Murphy provided a typical example to clarify: He had done a minor subdivision in the City of Lafayette; in order to be able to develop the five lots, he had to bring in the road and utilities; access for the properties was needed; a short road was built with a bulb to comply with MOFD requirements for emergency vehicle turnaround. When the subdivision was set up, it was with five individual lots and each of the owners owned to the middle of what was in front of their property; it was an easement 25 feet wide for the roadway with a circle large enough for the MOFD

vehicles to turn around. Each of the owners who bought one of the units was informed that there is no HOA; they owned “X” and they had ingress and egress for each property so they can use it to get access; each property owner was equally required to maintain the road as necessary, with majority agreement. This is the same situation that exists for 50% of the private roads; there are five or fewer houses on them, there is nothing much more than a shared private driveway and they are built to that standard. We don’t know what we are trying to assess; the costs could be exorbitant. He was required to build to the standards set forth by the City Engineer according to AC Transit specifications as far as the base, thickness, compaction, etc., to ensure that it was built properly and was adequately wide. It is not clear if this situation is the case with the 50% of the existing Orinda private roads. In the Roads of Hacienda, there are two streets which are private roads, EL Pulgar and Los Dedos Road, and neither are adequately wide and there is no room to widen the roads; to widen the roads would require taking property from the property owners, even if it is just an easement.

Chair Hubner asked if Councilmember Gee had any direction for staff. He would like to move the discussion onto compiling input on forum and format. He said he would like to get the perspective of the Council since they have directed staff.

Councilmember Gee said that she did not believe that the Council provided Director Theis and the staff a very serious direction to return to Council with a proposal. The reality is that the number and composition of people in the Task Force would be an obvious recommendation; the Council would probably prefer to see the Task Force operate from May to December, as an example, with a finite time frame so it does not go on for five years, and there should be a forum; if it is a public Task Force it would have Brown Act noticing requirements, it could meet every two weeks or once a month; there could also be a sub-committee; the Task Force should set the parameters.

Commissioner Murphy was hesitant and suggested setting some specific goals.

Councilmember Gee replied that she did not disagree; it is wise to get at least some input from private people.

Commissioner Nelson said a compromise might be to set some objectives and then additional objectives and other matters could be determined by the Task Force. As far as input, it needs to be balanced; property owners from public roads should be included; there is a compromise between the extreme of not giving them any objectives and leaving it all to the Task Force.

Councilmember Gee said that the City Council did not give any direction on what the objectives had to be.

Commissioner Fay referenced Director Theis’ important comments regarding equity and what the objective of the Task Force is to be; if it is equity, then that could be a very broad ranging set of topics; it could go anywhere from the City should take all private roads to the City will not maintain any public roads if there is fewer than ‘X’

number of houses on them so we have equity. In order to provide guidance, it is necessary to decide if it is about equity; certainly that is what the property owners on private streets have been saying at the CIOC meetings - that it is about equity. He questioned if they can actually be successful as a Task Force if that is one of their objectives and said that is the question for the Commission.

Chair Hubner said he did not have a good answer.

Commissioner Nelson thought equity had to be decided through the political process either by the City Council or by the voters; it would be asking a lot from the Task Force and he was not certain the City Council would take that recommendation; the more important thing is the fact finding that the Commission had focused on earlier. Director Theis had noted that it would be expensive; however, some facts may be needed and some not needed; there could be some fact findings but it could be very limited. The process is very important and he did not believe they necessarily had to decide which roads should be made public or not, but what processes they would consider. For instance: The property owner would be required to submit a petition which would initiate the process; the Engineering Department would then arrange for an engineering analysis that might be paid for by the City; then based upon the engineering analysis, the City would provide specifications, what repairs had to be done, an estimated cost, and whether funding would be provided.

Director Theis asked Commissioner Nelson to clarify who would have to provide the funding.

Commissioner Nelson said it could be the City or it could be the property owners; currently the property owners provide 100%, regardless of who funds the repairs and maintenance; he wants the City to do the improvements instead of a private party; he noted that these are the sorts of things that he would want to be included in the process, as well as some discussion on possible financing; it is clear that the Commission is not going to ask the City to do something if the City cannot pay for it.

Chair Hubner agreed that was key. The other side of the process is the actual Task Force process itself; one Councilmember wanted an informal committee/ commission and another Councilmember wanted a committee that would be subject to the Brown Act, irrespective of who comprises the Task Force. He wanted to get opinions on how to gather the information; he thought there was room for both; there should be a notified type of open house meeting; then it would have to be decided what to do with the information; he thought it should be a two-step process.

Commissioner Fay commented that there was no reason the Task Force could not have a workshop.

Director Theis said it would be necessary to have *appointed* people because the Task Force would be set up to have people with different opinions and ultimately possibly they would need to vote to decide what would be recommended.

Commissioner Fay advised that whatever the City Council puts together and whatever recommendation the CIOC might give to the Council for the Task Force, it was necessary to be mindful of the cost and draw on staff time; there is a lot of talent in the City and given the volunteer activism, volunteers might be able to assist City staff so it is not entirely on the staff to accomplish.

Chair Hubner concurred; the composition of the group should be someone from the CIOC, someone from the City Council, some property owners that represent private streets and some property owners that represent public roads; he thought seven or nine to be the optimum number to comprise the Task Force, but it should be defined members. He questioned if the City Council would then interview and approve the members.

Commissioner Fay stated that would be appropriate.

Director Theis suggested a seven member committee like the CIOC; with one or two Councilmembers, one or two Commissioners, and four citizens differentiated between public streets and private streets.

Chair Hubner said that was very close to the recommendation made at the previous CIOC meeting.

Commissioner Nelson agreed with the proposal; a limited number of members will make it easier to reach consensus on any recommendation; however, the concept should be that this should be a preamble process, with subsequently reaching out to as many property owners as possible so everyone is involved in a substantial way; the Brown Act is important, however it should not hamstring the process; he was not against the Brown Act if it would be constructive.

Director Theis advised that noticing the meeting would be the major requirement. How the forum is set up could be much less informal than the City Council, as long as there would be some direction from the City Council regarding how the discussion should be conducted and it is public and agendaized. He appreciated Commissioner Nelson's comments; there has not yet been any property owners from public roads that have stated their concerns.

Chair Hubner said that reflects his concern about the Task Force; he did not want the participants to get pressured by certain people into a decision; that would be unfair to the City.

Commissioner Nelson did not think the Task Force should necessarily recommend which private roads should become public roads; rather they should work on the process; he was concerned about exclusion of the residents; he has spoken with property owners who are vehement on both sides of the issue.

Chair Hubner concurred with Commissioner Nelson; a decision regarding which roads to accept should not be made, but a process should be established that clearly defines the parameters; alternatively, an amendment could be made to the current acceptance or non-acceptance process.

Commissioner Fay concurred with Commissioner Nelson and Chair Hubner.

The Commissioners decided that the Task Force should discuss different financing alternatives for bringing private roads into the public road system.

MOTION: By Commissioner Fay, seconded by Commissioner Murphy, to recommend to the City Council that a nine member Task Force be formed to consider private road acceptance, maintenance, and financing, to include three property owners from public roads, three property owners from private roads, two CIOC members, and one City Councilmember. The motion carried by unanimous voice vote.

MOTION: By Commissioner Fay, seconded by Commissioner Murphy, to recommend that the scope of the Task Force should include identifying the potential processes by which a current privately owned road could become public; and to reevaluate the City's current private road policy. The motion carried by unanimous voice vote.

Commissioner Hurrell stated that the Task Force should look at a separate process to find ways to facilitate for owners of private roads to overcome the issues where there is no current mechanism to allow them to come together and fund the maintenance of their road.

Commissioner Murphy stated that a question that is constantly being raised is regarding the legal aspects; he wanted to look at the legalities as related to the private roads and public roads; the CIOC had requested that the City Attorney speak to the Commission, however, the City Manager had decided not to have the City Attorney do so.

Chair Hubner said the Task Force will need to identify the legal ramifications as part of their charter.

Director Theis questioned whether the Commissioners wanted the City Attorney to attend the Task Force meetings as part of their recommendation.

The Commissioners decided that the City Attorney should attend the meetings as needed.

MOTION: By Commissioner Murphy, seconded by Commissioner Fay, to recommend an additional element of the Task Force charter should be to address the legal issues of private roads and how they are maintained. The motion carried by unanimous voice vote.

MOTION: By Commission Fay, seconded by Commissioner Murphy, to set the term of the Task Force not exceed nine months, to include a minimum of once monthly meetings, at least one public outreach meeting subsequent to the formation of the Task Force, and to ensure that all meetings are publicly noticed. The motion carried by unanimous voice vote.

H. Staff Updates

Director Theis and Paving Program Manager Khorashadi reported on the following items:

- *Update – Camino Pablo Emergency Drainage Repair* – A concrete pipe had been displaced and water had been escaping at the joint at a location near Wagner Ranch School; a portion of the pipe underneath the roadway has been lined, the southbound shoulder dug out, and a collar placed on the pipe; downslope repair work remains to be completed; staff will recommend at the next City Council meeting to end the emergency and proceed with the remainder of the work.
- *Update – Public Information and Outreach* – A community outreach meeting for the 2018 Pavement Rehabilitation Project is scheduled for 2:00 p.m., April 19, 2018; all utility companies are invited to attend.
- *Update - Measure L and Measure J – Program Revenue and Expense Summary and Project Expense Summary* – The summaries were not available.
- *Update – 2018 Paving Project* - PG&E and CCCSD are relocating their facilities throughout the City; bid opening is scheduled for 2:00 p.m., April 24.

Commissioner Fay questioned if the City has adequate funds to pave all remaining Residential roads and when that is expected to be accomplished.

Director Theis advised that all the public Residential roads will be paved by the end of 2019 unless the bids are higher than anticipated.

I. MATTERS INITIATED - None

J. ADJOURNMENT

MOTION: By Commissioner Murphy, seconded by Commissioner Hurrell, to adjourn the CIOC meeting. The motion carried by unanimous voice vote.

The Citizens' Infrastructure Oversight Commission meeting adjourned at 8:15 p.m.

The next regularly scheduled meeting of the Citizens' Infrastructure Oversight Commission will be 6:30 p.m., May 9, 2018, in the Sarge Littlehale Community Room, 22 Orinda Way, Orinda, California.